No. 76-18

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1976

LUIS ADAME FLORES, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioners contend that the warrantless search of their automobile by customs agents violated the Fourth Amendment.

Following a jury-waived trial in the United States District Court for the Southern District of Texas, petitioners were convicted of possessing with intent to distribute 205 pounds of marihuana and of conspiring to commit that offense, in violation of 21 U.S.C. 841(a)(1) and 846. Petitioner Flores was sentenced to concurrent terms of four years' imprisonment on each count, to be followed by a term of two years' special parole; petitioner Munoz was sentenced to concurrent terms of five years' imprisonment on each count, of which all but six months was suspended in favor of five years of supervised probation, to be followed by a special parole term of three years; and petitioner Chapa was sentenced to concurrent terms

of four years' imprisonment on each count, to be followed by a special parole term of three years. The court of appeals affirmed (Pet. App. A).[1]

The facts are set forth in the opinion of the court of appeals (Pet. App. 12-13). At approximately 3:45 p.m. on March 22, 1975, petitioners Flores and Chapa, together with co-defendant Garcia, crossed the Mexican-American border into Laredo, Texas, in a Ford automobile. After a dog trained to respond to the smell of contraband substances reacted to the car, customs officials searched the automobile. They found marihuana seeds and leaves in the trunk. They also found a room key for a motel in Roma, Texas—a border town 90 miles southeast of Laredo. The contents of the trunk were left undisturbed. The agents released the car's occupants but placed them under surveillance.

At about 6:15 p.m., Flores, Chapa, and Garcia arrived at the motel in Roma. One of the men left the motel in the Ford, picked up petitioner Munoz, and then returned to the motel with him. All four men later left the motel together and traveled to a nearby area where petitioner Munoz got out of the car. The others returned to the motel. At about 10:00 p.m., a Cadillac pulled up alongside the Ford at the motel and its driver entered petitioners' room. Shortly thereafter, the suspects moved packages from the rear seat of the Ford to its trunk and moved a spare tire from the rear seat of the Cadillac to the rear seat of the Ford. At 10:45 p.m., the Ford left the motel; customs

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[1]The judgment of the court of appeals (Pet. App. B) was entered on April 30, 1976, and a petition for rehearing was denied on May 26, 1976. The petition for a writ of certiorari was not filed until July 1, 1976, and is therefore out of time under Rule 22(2) of this Court's Rules.

officials stopped it a quarter-mile away. The agents arrested petitioners Flores and Chapa and co-defendant Garcia. In the search that followed only the marihuana seeds and leaves that had previously been found at the border were again uncovered. Approximately two minutes after the Ford left the motel, agents arrested petitioner Munoz as he entered the Cadillac. This automobile was taken to the border entry point at Roma and searched without a warrant. The 205 pounds of marihuana that petitioners were charged with possessing was found in the trunk of the Cadillac.

Petitioners contend that the search of the Cadillac without a warrant was unlawful and that the marihuana should have been suppressed. It is settled, however, that routine searches of automobiles, even in the absence of reasonable suspicion, may properly be conducted at the border or its functional equivalents. *Almeida-Sanchez* v. *United States*, 413 U.S. 266, 272-273. Because "[i]t is simply not possible * * * to police the borders effectively if enforcement is confined to the border itself and its immediate vicinity * * * [t]he Fourth Amendment * * * allows reasonable latitude to customs officials to carry out searches for contraband somewhat within the nation's borders, in the general border area." *United States* v. *Bowman*, 502 F. 2d 1215, 1219 (C.A. 5). Such an " 'extended border search' " may be made without a warrant if the agent has a reasonable suspicion of illegal activity and if the vehicle or its occupants have "some reasonably direct connection with the border" (*ibid.*). It is not essential to show that the vehicle itself crossed the border. It is enough if "the vehicle or its passengers have * * * been in touch with those who have" recently crossed the border. *United States* v. *Storm*, 480 F. 2d 701, 704, n. 5 (C.A. 5); *United States* v. *Newell*, 506 F. 2d 401, 404 (C.A. 5).

The court of appeals here correctly concluded that the search of the Cadillac was an "extended border search." First, "although the precise nature of the transaction was not known," the agents had "adequate basis for a reasonable suspicion * * * that the four men were involved in a narcotics transaction" (Pet. App. 13).[2] Second, the court correctly determined that the Cadillac had a reasonably direct connection with the border, even though it may not itself have crossed the border (Pet. App. 14):

> Several hours had elapsed since the Ford had crossed. Bearing in mind the overall nexus with the border, the geographical proximity of Roma to the border, the ongoing surveillance and the activities that had been observed, the contacts of the Cadillac and its occupant with a car, and its occupants, which had recently crossed the border, the search of the Cadillac was an extended border search.

Further review of the court's factual determination is not warranted.

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[2]The court stated (Pet. App. 13):

> There were various possibilities: that in the Ford there was additional marijuana that had not been discovered at Laredo; that the parcels removed from the back seat to the trunk of the Ford contained marijuana or other contraband; that the spare tire removed from the rear seat of the Cadillac to the rear seat of the Ford contained narcotics; that the Cadillac spare tire was in the rear seat of the Cadillac rather than the trunk so as to make room in the trunk (or more specifically in the tire well) for something else; that the tire was transferred to the Ford so as to remove it from open view in the back seat of the Cadillac where its presence in this unusual location might trigger suspicion of the contents of the Cadillac trunk; that contraband either had been or was proposed to be transferred from one vehicle to the other in some manner not known or precisely foreseen by the officers.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1976.